



**PROTECTION & ADVOCACY
SERVICE, INC.**

SUPPORT HOUSE BILLS 5409-5417

End the Misuse of Restraint and Seclusion in Schools

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In 2009, U.S. Secretary of Education Arne Duncan wrote to state superintendents about the "abusive and potentially deadly misapplication of seclusion and restraint techniques in schools." He urged each state to "review its current policies and guidelines regarding the use of restraints and seclusion in schools *to ensure every student is safe and protected.*"

Seven years after Secretary Duncan's letter and 13 years after two students died while being restrained in Michigan schools, our school system restrains and secludes children over 4,500 times a year without any limitation or accountability. Policy reforms are needed that will:

- Apply to all students.
- Limit use of restraint and seclusion to emergencies involving risk of substantial harm to self or others.
- Require use of best practices in behavior support and planning.
- Prohibit practices that are inherently dangerous or used for punishment.
- Fund staff training to protect the safety of students and teachers.
- Require reporting to parents and public reporting of aggregate use.

House Bills 5409-5417 are bipartisan, common-sense reforms supported by parents and educators alike. They earned the support of over 80 House members and deserve immediate action in the Senate.

Michigan students have waited 13 years to be safe. Please act now.

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Number and percentage of public school students with and without disabilities subjected to restraint or seclusion, by race/ethnicity, whether with disabilities served under IDEA or Section 504, and English proficiency, by gender and whether restrained or secluded, for state: School Year 2011-12

	Restraint or Seclusion	Gender	Total Students	
			Number	Percent
Michigan		Male	422	70.0
		Female	181	30.0
	Mechanical restraint	Total	603	100.0
		Male	2,027	78.9
		Female	542	21.1
	Physical restraint	Total	2,569	100.0
		Male	1,554	76.4
		Female	480	23.6
	Seclusion	Total	2,034	100.0



U.S. Department of Education Office for Civil Rights

CIVIL RIGHTS DATA COLLECTION

Data Snapshot: School Discipline

Issue Brief No. 1 (March 2014)

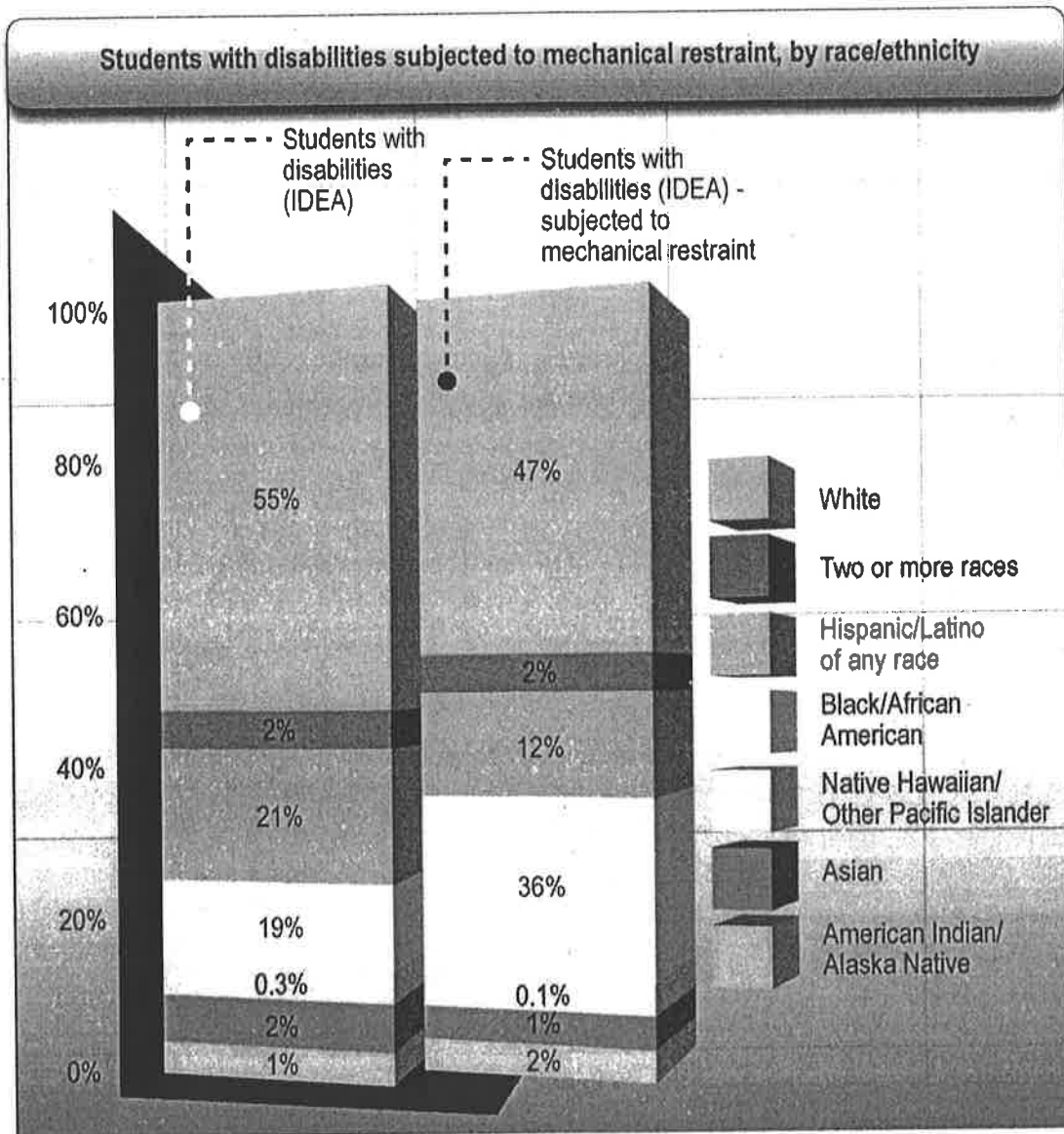
For other data snapshots in the series, visit the CRDC at: www.ocrdata.ed.gov

INSIDE THIS SNAPSHOT: School Discipline, Restraint, & Seclusion Highlights

- **Suspension of preschool children, by race/ethnicity and gender** (*new for 2011-2012 collection*): Black children represent 18% of preschool enrollment, but 48% of preschool children receiving more than one out-of-school suspension; in comparison, white students represent 43% of preschool enrollment but 26% of preschool children receiving more than one out of school suspension. Boys represent 79% of preschool children suspended once and 82% of preschool children suspended multiple times, although boys represent 54% of preschool enrollment.
- **Disproportionately high suspension/expulsion rates for students of color:** Black students are suspended and expelled at a rate three times greater than white students. On average, 5% of white students are suspended, compared to 16% of black students. American Indian and Native-Alaskan students are also disproportionately suspended and expelled, representing less than 1% of the student population but 2% of out-of-school suspensions and 3% of expulsions.
- **Disproportionate suspensions of girls of color:** While boys receive more than two out of three suspensions, black girls are suspended at higher rates (12%) than girls of any other race or ethnicity and most boys; American Indian and Native-Alaskan girls (7%) are suspended at higher rates than white boys (6%) or girls (2%).
- **Suspension of students with disabilities and English learners:** Students with disabilities are more than twice as likely to receive an out-of-school suspension (13%) than students without disabilities (6%). In contrast, English learners do not receive out-of-school suspensions at disproportionately high rates (7% suspension rate, compared to 10% of student enrollment).
- **Suspension rates, by race, sex, and disability status combined:** With the exception of Latino and Asian-American students, more than one out of four boys of color with disabilities (served by IDEA) — and nearly one in five girls of color with disabilities — receives an out-of-school suspension.
- **Arrests and referrals to law enforcement, by race and disability status:** While black students represent 16% of student enrollment, they represent 27% of students referred to law enforcement and 31% of students subjected to a school-related arrest. In comparison, white students represent 51% of enrollment, 41% of students referred to law enforcement, and 39% of those arrested. Students with disabilities (served by IDEA) represent a quarter of students arrested and referred to law enforcement, even though they are only 12% of the overall student population.
- **Restraint and seclusion, by disability status and race:** Students with disabilities (served by IDEA) represent 12% of the student population, but 58% of those placed in seclusion or involuntary confinement, and 75% of those physically restrained at school to immobilize them or reduce their ability to move freely. Black students represent 19% of students with disabilities served by IDEA, but 36% of these students who are restrained at school through the use of a mechanical device or equipment designed to restrict their freedom of movement.

Mechanical restraint of students of color with disabilities

Black students represent 19% of students with disabilities served by IDEA, but 36% of these students who are subject to mechanical restraint.



NOTE: Detail may not sum to 100% due to rounding. Figure represents 99% of CRDC responding schools, including 6 million students served by IDEA and nearly 4,000 IDEA students subject to mechanical restraint.

SOURCE: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011-12.

Table 3. Students subject to physical restraint, by disability (IDEA) status and state: 2011-12

State	Of the students enrolled, what percent are served by IDEA?	Of the students subject to physical restraint, what percent are served by IDEA?
UNITED STATES	12%	75%
Alabama	12%	72%
Alaska	14%	75%
Arizona	12%	77%
Arkansas	11%	41%
California	10%	81%
Colorado	10%	73%
Connecticut	12%	81%
Delaware	15%	87%
District Of Columbia	14%	72%
Florida	12%	95%
Georgia	11%	52%
Hawaii	11%	n/a
Idaho	9%	73%
Illinois	13%	85%
Indiana	14%	80%
Iowa	12%	79%
Kansas	13%	80%
Kentucky	14%	58%
Louisiana	10%	43%
Maine	16%	85%
Maryland	11%	75%
Massachusetts	16%	82%
Michigan	13%	71%
Minnesota	15%	71%
Mississippi	12%	40%
Missouri	13%	59%

Data Notes and Methodology

Since 1968, the Civil Rights Data Collection (CRDC) has collected data on key education and civil rights issues in our nation's public schools for use by the Department of Education's Office for Civil Rights (OCR), other Department offices, other federal agencies, and by policymakers and researchers outside of the Department. The CRDC collects information about school characteristics and about programs, services, and outcomes for students. Most student data is disaggregated by race/ethnicity, gender, limited English proficiency, and disability.

Schools and Districts Included

The CRDC has generally been collected biennially from school districts in each of the 50 states, plus the District of Columbia. The 2011-12 CRDC included all public schools and public school districts in the nation that serve students for at least 50% of the school day. The CRDC also includes long-term secure juvenile justice agencies, schools for the blind and deaf, and alternative schools. The response rate for this large national collection was 98.4% of school districts and 99.2% of schools, representing 99.6% of students in the nation.

Race and Ethnicity

For the 2011-12 CRDC, districts reported data using the seven race and ethnicity categories (Hispanic/Latino, white, black/African-American, Asian, Native Hawaiian/Other Pacific Islander, American Indian/Alaska Native, and Two or More Races). For more information on the Department's 2007 guidance regarding race and ethnicity categories, please visit <http://www2.ed.gov/policy/rschstat/guid/raceethnicity/index.html>.

Privacy Protection and Data Rounding

To ensure the protection of privacy while meeting the purposes of the CRDC, OCR conducted the analysis presented in this document on the privacy protected CRDC data. The CRDC data is privacy protected by rounding student counts in groups of three to prevent the disclosure of individual student information. For example, student counts from 1-3 are rounded to two, student counts from 4-6 are rounded to five.

In previous years, OCR has rounded CRDC data to the nearest five. However, in collaboration with the Department's Disclosure Review Board, OCR implemented a new rounding method for the 2011-12 CRDC to reveal true zeroes where possible and minimize the distortion of rounding. In general, for the 2011-12 CRDC data, the distortion of rounding one student to two would be balanced by the rounding down of three students to two. However, this new privacy protection method may inflate total counts for CRDC data elements in which there are prevalent cases of schools reporting only one student (e.g., one student retained is rounded to two students retained).

Limitations of CRDC Data

OCR strives to ensure CRDC data are an accurate and comprehensive depiction of student access to educational opportunities in school districts. The submission system includes a series of embedded edit checks to ensure significant data errors are corrected before the district submits its data. Additionally, each district is required to certify the accuracy of its submission. Only a district superintendent, or the superintendent's designee, may certify the CRDC submission. Ultimately, the quality of the CRDC data depends on accurate collection and reporting by the participating districts.

- *Expulsion with educational services:* An action taken by the local educational agency removing a child from his/her regular school for disciplinary purposes, with the continuation of educational services, for the remainder of the school year or longer in accordance with local educational agency policy. Expulsion with educational services also includes removals resulting from violations of the Gun Free Schools Act that are modified to less than 365 days.
- *Expulsion without educational services:* An action taken by the local educational agency removing a child from his/her regular school for disciplinary purposes, with the cessation of educational services, for the remainder of the school year or longer in accordance with local educational agency policy. Expulsion without services also includes removals resulting from violations of the Gun Free Schools Act that are modified to less than 365 days.
- *Referral to Law Enforcement:* Referral to law enforcement is an action by which a student is reported to any law enforcement agency or official, including a school police unit, for an incident that occurs on school grounds, during school-related events, or while taking school transportation, regardless of whether official action is taken.
- *School-related arrest:* A school-related arrest is an arrest of a student for any activity conducted on school grounds, during off-campus school activities (including while taking school transportation), or due to a referral by any school official.

Generally, discipline data is presented two ways in this snapshot. Figure 1 shows the proportion of all students subject to disciplinary actions who are represented in each race/ethnicity category. The data is presented in stacked bar charts where each bar sums to 100 percent. Figure 2 presents the information as a rate. For example, of all the black male students enrolled, 20 percent received an out-of-school suspension. By presenting the rate as a rate, the prevalence of the disciplinary action can be analyzed.

Discipline by Race, Section 504 Students: The CRDC collects detailed disaggregated discipline data for non-disabled students, students served by IDEA, and Section 504 students. Because the CRDC does not include the race/ethnicity breakdown of students served by Section 504 only, the percentages by race/ethnicity of students receiving each type of disciplinary action are calculated based on non-disabled students and students served by IDEA.

Expulsions: The percentage of students receiving expulsions includes both expulsions with services and without services.

Referrals to law enforcement and school-related arrests: The data represented in these figures excludes schools with possible reporting errors. For example, some schools reported large numbers of students subjected to school-related arrests, but much smaller counts of students referred to law enforcement. To ensure large reporting errors did not bias the results, school reporting over 150% of the students referred to law enforcement as arrested, were excluded from the analysis.

About the CRDC

Since 1968, the Civil Rights Data Collection (CRDC), formerly the Elementary and Secondary School Survey, has collected data on key education and civil rights issues in our nation's public schools for use by the Department of Education's Office for Civil Rights (OCR) in its enforcement and monitoring efforts regarding schools' and districts' obligation to provide equal educational opportunity. The CRDC is also a tool for other Department offices and federal agencies, policymakers and researchers, educators and school officials, and the public to analyze student equity and opportunity trends locally and nationwide. The CRDC database, with hundreds of data elements, is fully accessible to the public. All data presented are self-reported by school districts. For more information about the CRDC, please visit www.ocrdata.ed.gov.

About the 2011-12 Civil Rights Data Collection (CRDC)

- For the first time since 2000, includes data from *every* public school in the nation (approximately 16,500 school districts, 97,000 schools, and 49 million students)
- Includes traditional public schools (preschool through 12th grade), alternative schools, career and technical education schools, and charter schools
- Data for every public school disaggregated by race/ethnicity, English learner status, sex, and disability
- New for 2014: data for *all* schools now disaggregated by 7 race and ethnicity categories, including Native-Hawaiian, Pacific-Islander, and multiracial students
- Measures student access to college- and career-preparatory science and math courses, AP courses and tests, SAT/ACT tests, gifted and talented programs, IB programs, preschool programs, and interscholastic athletics
- Tracks teacher and resource equity, including teacher experience and salary levels, other personnel and non-personnel expenditures, and access to school counselors
- Reveals school climate disparities related to student discipline, restraint and seclusion, retention, and bullying and harassment

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We have provided detailed written information for the hearing record. This information includes our 2009 report, a 2009 report by the federal Government Accountability Office, a 2012 report from our national association, and a 2015 report from the State of Connecticut. We have included a press release from the Council for Exceptional Children, the nation's premier organization of educators who work with children with disabilities, reporting that there is no legitimate educational purpose for use of restraint and seclusion and expressing its support for significant limits on their use. We also have included fact sheets, stories from parents and school staff about their experiences, and a report from attorney Jessica Butler with an update on what other states are doing in this area. Finally, we include a link to a film featuring young adults and their parents who describe the reality of restraint and seclusion in their own words. The link is <http://stophurtingkids.com/the-film/>. In the interest of time, I won't go over all of this information in detail, but I urge you to look at it.

The U.S. Department of Education, Office for Civil Rights, collected data on the use of restraint and seclusion in schools for the first time last year. This data, from the 2012 school year, showed there were over 2,000 incidents of seclusion and 2,500 incidents of restraint in Michigan schools. Nearly two-thirds of those incidents involved students with disabilities.

MPAS also receives about 7,000 calls per year, about a quarter related to education. We survey parents who call us about disability-related behavior issues in school, including the use of seclusion or restraint. Since our most recent round of surveying began in 2014, 290 parents have reported on the use of restraint or seclusion - 49 in the past three months. Here are some of the most recent reports:

- A 16 year old girl with an intellectual disability was locked in a seclusion room with her lunch.
- A 7 year old boy with ADHD was restrained for two hours by staff.
- A 6 year old child with mental illness was locked in a supply closet.
- A 6 year child with an emotional impairment was dragged down a hallway wrapped in a mat, then locked in a room.
- A 15 year old student was pushed against a wall and held there, leaving a thumbprint.

**TESTIMONY OF JANE SHANK, BOARD MEMBER,
MICHIGAN PROTECTION & ADVOCACY SERVICE, INC.,
ON RESTRAINT AND SECLUSION IN SCHOOLS**

My name is Jane Shank. I am a member of the MPAS Board of Directors and also serve as Executive Director of the Association for Children's Mental Health. ACMH provides information, support, resources, referral and advocacy for children and youth with mental, emotional, or behavioral disorders and their families.

My connection to the disability rights and advocacy world is first and foremost as the mom of a young man with mental health challenges. His experiences in kindergarten and first grade in the public education system were less than supportive which lead me to become his advocate. And that in turn lead me to find ACMH where I worked for six years as a Family Advocate in northern Michigan, then moved to three years as Statewide Coordinator of the Parent Support Partner project and then into Executive Director role.

Seclusion and restraint are punitive measures with no possible positive outcomes. They are not about safety, nor are they therapeutic. Seclusion is particularly pernicious because it involves both the use of physical force – to force children into a spaces where they do not want to go – and confinement against their will. Let's be clear – when we talk about seclusion we are not talking about a child choosing to go to a place to decompress or have a "time out." We are talking about use of force or fear to coerce a child into a closed cell. For a child with mental health issues or a history of trauma, seclusion is not only counterproductive, but it is dangerous.

A 2009 report by the Council on Exceptional Children, a well-respected national organization representing professionals in special education, concluded that seclusion was a dangerous practice that should only be used in emergencies involving imminent physical danger to self or others and only after less dangerous alternatives had been tried. If we had appropriate training in the use of positive behavioral intervention and supports, we would probably not have to be so concerned with 'safety' or the use of teacher's time in punitive measures-thus allowing them to have more time to teach. I know enough educators to know that those strategies are



How Often Restraint/Seclusion Is Used and Why

- Michigan schools self-reported 2,569 incidents of physical restraint and 2,034 incidents of seclusion in the 2011-2012 school year. Two-thirds of these incidents were against students with disabilities. (U.S. Department of Education, Office of Civil Rights Data Collection)
- One study of teachers of students with emotional or behavioral disorders in public schools found that many had used restraint as a part of a planned behavior intervention or a reaction to behaviors, including 71% for aggression toward others, 40% to prevent self-abuse, and 34% to prevent destruction of property.¹
- Frequently, seclusion is used for non-emergencies and continues long after any emergency has ended.²
- Restraint has been used for failing to do schoolwork, being unable to pay attention due to disability issues, pushing items off desks, getting out of a seat; sharpening too many pencils, taking off shoes, staff convenience, punishment, and similar activities.³
- Restraint and seclusion expose children to danger, escalate difficult behaviors, and create a cycle of violence. But research shows that positive interventions, conflict resolution, and de-escalation resolve difficult situations and help prevent and reduce seclusion and restraint.⁴

¹ Ruhl, K.L. & Hughes, C.A. (1985). The nature and extent of aggression in special education settings serving behaviorally disordered students. *Behavioral Disorders*, W, 95-104.

² Butier, Jessica (2012) How Safe is the Schoolhouse: An Analysis of State Seclusion and Restraint Laws and Policies. Available at www.autcom.org

³ See GAO REPORT at 22-25; Kevin Keen, Tucson Student: Teacher Taped Me to a Chair, KGUN9 (Ariz.) (Aug. 20, 2013); Jeffrey Meitrodt, Disabled Students Face Dangerous Discipline in Minnesota, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013; Sandra Chapman, 13 Investigates: Duct Tape Incident Prompts Call for Change in State Law, WTHR (IND.), Feb. 7, 2013; Zac Taylor, Mason Principal Sued Over Alleged Abuse, CHARLESTON GAZETTE, Apr. 13, 2012.; JESSICA BUTLER, UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (COPAA 2009) (passim); NDRN, SCHOOL IS NOT SUPPOSED TO HURT (2009) (passim).

⁴ KEVIN ANN HUCKSHORN, SIX CORE STRATEGIES TO REDUCE THE USE OF SECLUSION AND RESTRAINT AS A PLANNING TOOL (The National Association of State Mental Health Program Directors 2005).